

IN THE
ARIZONA COURT OF APPEALS
DIVISION TWO

LAURA S.,
Appellant,

v.

ARIZONA DEPARTMENT OF ECONOMIC SECURITY AND S.S.,
Appellees.

No. 2 CA-JV 2013-0122
Filed March 7, 2014

THIS DECISION DOES NOT CREATE LEGAL PRECEDENT AND
MAY NOT BE CITED EXCEPT AS AUTHORIZED BY APPLICABLE RULES.

NOT FOR PUBLICATION

See Ariz. R. Civ. App. P. 28(c); Ariz. R. P. Juv. Ct. 103(G).

Appeal from the Superior Court in Pima County

No. JD173192

The Honorable Kathleen Quigley, Judge

AFFIRMED

COUNSEL

Sarah Michèle Martin, Tucson
Counsel for Appellant

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Thomas C. Horne, Arizona Attorney General
By JoAnn Falgout, Assistant Attorney General, Phoenix
Counsel for Appellee Arizona Department of Economic Security

MEMORANDUM DECISION

Judge Miller authored the decision of the Court, in which Presiding Judge Vásquez and Judge Brammer¹ concurred.

M I L L E R, Judge:

¶1 Appellant Laura S. appeals from the juvenile court's October 2013 order terminating her parental rights to her daughter S.S., who is now ten years old. Laura does not challenge the court's findings of statutory grounds for termination, but argues there was insufficient evidence to support the court's finding that terminating her parental rights was in S.'s best interests. We affirm the court's termination order for the following reasons.

Background

¶2 In its under-advisement ruling, the juvenile court described the history of the Arizona Department of Economic Security's (ADES's) involvement with Laura and her five children that began in 1990, and Laura does not dispute those findings. ADES filed its most recent dependency petition in July 2011, when Laura was hospitalized after threatening suicide while S. and her older sister A., then thirteen, were in the home.² The girls were

¹The Hon. J. William Brammer, Jr., a retired judge of this court, is called back to active duty and is assigned to serve on this case pursuant to orders of this court and the supreme court.

²Only S. and A. were still in Laura's care when this dependency was filed. According to the juvenile court's ruling, Laura's parental rights to her oldest child, J., had been terminated

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found dependent after Laura admitted allegations in the dependency petition. Laura participated in case plan services, and A. and S. were returned to her physical custody in May 2012.

¶3 In February 2013, the girls again were removed from Laura's care when Child Protective Services (CPS), a division of ADES, learned that Laura had been allowing A.'s twenty-one-year-old boyfriend to live in A.'s bedroom. A. ran away from her placement in early March; on March 20, the CPS case manager made an unannounced visit to Laura's home and found A. and her boyfriend hiding there. In May, the case plan was changed to severance and adoption for S. and "another planned permanent living arrangement" for A.

¶4 ADES then filed a petition to terminate Laura's parental rights to S., alleging (1) Laura's mental illness rendered her unable to discharge her parental responsibilities, with reasonable grounds to believe the condition would continue for a prolonged indeterminate period, *see* A.R.S. § 8-533(B)(3); and, (2) despite extensive reunification services, Laura had been unable to remedy the circumstances causing S. to have been in court-ordered, out-of-home placement for a cumulative total of fifteen months or longer, and there was a substantial likelihood she would remain unable to parent effectively in the near future, *see* § 8-533(B)(8)(c). After a contested adjudication hearing, the juvenile court found ADES had established both grounds by clear and convincing evidence; further, by a preponderance of the evidence, also had shown terminating Laura's parental rights was in S.'s best interests.

pursuant to a dependency proceeding initiated in 1990. In 2006, Laura's second child, E., had been placed in a guardianship amid allegations that she had been abused by Laura and Laura's husband, Jimmy S. In 2007, after Laura's third and fourth children, L. and A., reported they also had been abused by Jimmy, Laura "kicked Jimmy . . . out of the family home." Four months later, Laura asked that L. be removed from her care because of his "escalating behaviors that included verbal and physical abuse" toward his sisters A. and S.

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Discussion

¶5 To terminate parental rights, a juvenile court must find the existence of at least one of the statutory grounds for termination enumerated in § 8-533(B) and “shall also consider the best interests of the child.” Although statutory grounds for termination must be proven by clear and convincing evidence, only a preponderance of the evidence is required to establish that termination will serve the child’s best interests. See A.R.S. §§ 8-533(B), 8-537(B); *Kent K. v. Bobby M.*, 210 Ariz. 279, ¶ 41, 110 P.3d 1013, 1022 (2005). A court’s ruling that termination of parental rights is in a child’s best interests “must include a finding as to how the child would benefit from a severance or be harmed by the continuation of the relationship.” *In re Maricopa Cnty. Juv. Action No. JS-500274*, 167 Ariz. 1, 5, 804 P.2d 730, 734 (1990) (emphasis omitted).

¶6 We will affirm a juvenile court’s order terminating parental rights unless we must say as a matter of law that no reasonable person could find the essential elements proven by the applicable evidentiary standard. *Denise R. v. Ariz. Dep’t of Econ. Sec.*, 221 Ariz. 92, ¶¶ 9-10, 210 P.3d 1263, 1265-66 (App. 2009). We view the evidence in the light most favorable to upholding the court’s order. *Id.* ¶ 10.

¶7 In its ruling, the juvenile court addressed the question of S’s best interests as follows:

If the parent child relationship [between Laura and S.] is continued, even if not placed with her mother, S[,] would be continually exposed to the consequences of her mother’s mental illness and inability to protect, including: a constant fear that her mother’s mental illness would cause her to become an unsafe parent, lack of a stable and appropriate parental figure, and a continuation of the lack of permanency that is necessary for S[.]’s emotional development and well-being. S[,] would

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also be provided a benefit by the termination in that it would afford her an opportunity to be adopted by her current placement. While this is not a firm adoption plan, the current placement is a prospective adoptive home for S[.] Therefore, the Court finds by a preponderance of the evidence that the termination of Laura[]'s parental rights is in S[.]'s best interest.

¶8 On appeal, Laura argues the juvenile court's termination order must be reversed because its determination that severance is in S.'s best interests "is contrary to the evidence." She cites the testimony of M.J., a former CPS case manager who had been assigned to Laura's family from 2008 until August 2012, who stated that, based on his work with the family, he did not think S. would be harmed by continuation of Laura's parental relationship or benefit from severance of Laura's parental rights. She notes that, at the time of the adjudication hearing, S. had not yet been seen by a therapist and asserts the court therefore "had no evidence from a qualified therapist which would contradict [M.J.]'s opinion." She also maintains "[t]here was no evidence presented as to how severance would benefit S[.]" because "there was no evidence presented that S[.] would ever be adopted."

¶9 Laura's claim of insufficient evidence is not supported by the record. CPS case manager S.F., who was assigned to the family's case when M.J. left the agency in August 2012, testified that S. was in a potential adoptive placement, had bonded with her foster parents, and had a "very good relationship" with them. She told the juvenile court that S.'s foster parents were able to meet S.'s needs, including special needs related to her diagnosis with attention deficit hyperactivity disorder and delays in her speech and fine motor skills. She said she believed an adoptive placement could be found for S. even if her current foster parents decided not to adopt her. S.F. opined S. would benefit from termination of Laura's parental rights because she would have "the permanency and stability that comes with having a permanent placement," would

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have “consistent and higher” quality of care, and “would be safer.” She also opined that S. “could be at risk of harm” if Laura continued to exercise her parental rights.

¶10 Contrary to Laura’s argument, ADES “need not show that it has a specific adoption plan” in place to establish termination is in a child’s best interests; rather, it is sufficient to show that a child is “adoptable.” *In re Maricopa Cnty. Juv. Action No. JS-501904*, 180 Ariz. 348, 352, 884 P.2d 234, 238 (App. 1994). In assessing a child’s best interests, the juvenile court also may consider whether the child’s present placement is meeting the child’s needs. *In re Maricopa County Juv. Action No. JS-8490*, 179 Ariz. 102, 107, 876 P.2d 1137, 1142 (1994).

¶11 The juvenile court appropriately considered such factors as the instability that had characterized S.’s life; her need for permanency; and her opportunities for adoption, potentially by her foster parents, who already have shown they are able to meet her needs. Laura points to no authority, and we are aware of none, suggesting ADES was required to present testimony from a “qualified therapist” to establish S.’s best interests.

Disposition

¶12 It is the juvenile court’s function to observe the parties, judge the credibility of witnesses, weigh the evidence, and make appropriate factual findings. *Jesus M. v. Ariz. Dep’t of Econ. Sec.*, 203 Ariz. 278, ¶ 4, 53 P.3d 203, 205 (App. 2002). We do not reweigh the evidence on review, and we will accept the court’s findings as long as they are supported by reasonable evidence. *Id.* ¶ 12. Here, the record fully supports the court’s finding that termination of Laura’s parental rights is in S.’s best interests.

¶13 Accordingly, we affirm the juvenile court’s order terminating Laura’s parental rights to S.